

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 13 2005

In the Matter of)
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Choice Communications LLC)
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Petition for Designation as an Eligible)
Telecommunications Carrier in the)
United States Virgin Islands)
_____)

Federal Communications Commission
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Office of Secretary

CC Docket No. 96-45

**CHOICE COMMUNICATIONS LLC PETITION FOR DESIGNATION
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

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**CHOICE COMMUNICATIONS LLC PETITION FOR
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

Choice Communications LLC ("Choice"), pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the "Act"),¹ respectfully petitions the Wireline Competition Bureau of the Federal Communications Commission ("Bureau") for designation as an eligible telecommunications carrier ("ETC") throughout its licensed service area in the U.S. Virgin Islands. The U.S. Virgin Islands Public Services Commission ("VIPSC") has rendered a decision that it lacks jurisdiction to designate Choice as an ETC, and, therefore, the Commission has jurisdiction to grant this Petition. Choice satisfies the statutory and regulatory requirements for ETC designation and requires Universal Service Fund ("USF") support to compete effectively as the only competitive local exchange carrier ("CLEC") in the U.S. Virgin Islands. Currently,

¹ 47 U.S.C. § 214(e)(6). See *Public Notice, Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947 (1997) ("ETC Designation Public Notice"). In the *ETC Designation Public Notice*, the Federal Communications Commission ("Commission") designated authority to the Bureau (formerly known as the Common Carrier Bureau) to perform ETC designations when the state commission lacks jurisdiction.

customers of the incumbent carrier experience sub-par service, thus demonstrating the need for a competitive alternative in the U.S. Virgin Islands. Accordingly, it is in the public interest to designate Choice as an ETC. Choice requests that the Bureau promptly grant this Petition.

I. BACKGROUND

Choice, formerly known as Wireless World, LLC, and its affiliated companies provide a variety of telecommunications, information and other related services to both business and residential customers in the U.S. Virgin Islands.² Choice's licensed service area encompasses the entire U.S. Virgin Islands, and is comparable, if not identical, to Innovative Telephone's ("Innovative") study area,³ the incumbent local exchange carrier ("ILEC") in the U.S. Virgin Islands. Within that area Choice's wireless network enables it to provide services to areas that Innovative does not serve.⁴ Specifically, Choice has invested in excess of \$20 million to construct and expand a network that supports:

- Wireless digital multichannel video service and wireless broadband Internet service using Choice's MMDS licenses for Basic Trading Area ("BTA") 491 and using unlicensed spectrum in a variety of frequency bands;

² Choice and its predecessor companies have been providing telecommunications services in the U.S. Virgin Islands since 1987.

³ Innovative serves over 71,000 lines in the U.S. Virgin Islands and also offers long distance, cellular, dial-up Internet, and DSL service. In addition, Innovative owns the local newspaper with the largest circulation in the territory, the only wireline cable TV system in the U.S. Virgin Islands and a cable television channel, among other properties. Since Choice's licensed service area encompasses the entire U.S. Virgin Islands, it is likely that its licensed service area is at least comparable to Innovative's study area (and even may extend beyond Innovative's study area). Choice has been unable to locate a definitive map of Innovative's study area.

⁴ The FCC auctioned Multichannel Multipoint Distribution Service ("MMDS") licenses to Choice's predecessor company, which subsequently changed its name to Choice Communications LLC. The MMDS license area is BTA 491, which encompasses all of the U.S. Virgin Islands and includes all the lesser islands in the territory. See Exhibit 1: Map Illustrating Choice's licensed service area.

- Dial-up Internet service, through Choice's own network operating facilities and transport service leased at retail rates from Innovative;⁵
- Paging and Specialized Mobile Radio ("SMR") services subject to competition from other entities; and
- Long-distance service and additional near-line-of-site ("NLOS") wireless broadband technology which, in conjunction with Choice's Sonus switch installed in the U.S., will increase the breadth and penetration of Choice products in 2005.

Choice seeks to be designated as an ETC to provide local telecommunications services throughout its licensed service area. Choice's licensed service area, and the area in which Choice seeks ETC designation, covers 100 percent of the overall population of the U.S. Virgin Islands.

Choice holds several wireless licenses from the Commission, including Multipoint Distribution Service ("MDS") and MMDS licenses in the E, F, and H blocks; LMDS licenses in the A block; paging licenses at 158.1 and 454.6 MHz, and SMR licenses in the 800 MHz band. In addition, Choice leases ITFS licenses in the B and G blocks. Choice uses the MMDS licenses for the U.S. Virgin Islands to provide wireless cable television and high-speed Internet access in large parts of St. Thomas, St. John, and St. Croix. Choice also holds point-to-point radio licenses.

The entire U.S. Virgin Islands has been classified as a rural high-cost area.⁶ Innovative, the ILEC in the U.S.V.I., currently receives substantial high cost universal service fund ("USF") support as well as other USF support.⁷ Absent universal service support equal to

⁵ Innovative operates under the rural exemption from Section 251(c) of the Act, which otherwise would require Innovative to lease certain facilities to competitors at reduced rates. Choice leases over 50 T1s from Innovative at tariffed rates in order to route Choice dial-up customers to the Internet. Innovative has refused to offer DS3 service and the local PSC thus far also has refused to require Innovative to do so.

⁶ Innovative has been granted ETC status and receives approximately \$32 million in USF support annually and recently requested \$16 million in high cost support.

⁷ Innovative is exempt from the wholesale pricing requirements of section 251(c) of the Act because of its claim that it is a rural LEC. Choice's efforts to eliminate the rural exemption in order to obtain competitive pricing for Innovative network elements necessary to

Innovative, it is economically impossible for a competing carrier, such as Choice, to enter Innovative's market and provide similar local services with ubiquitous coverage to consumers in the U.S. Virgin Islands. In an area where the ILEC already receives significant per-line subsidies, there will be no broad-based local telephone competition, which is both feasible and in demand,⁸ unless the Commission extends ETC status to Choice, which is the only other carrier competing with Innovative with a variety of fixed service offerings, so that Choice may qualify for the universal service funds it needs to compete fairly with Innovative's subsidized local services.⁹

II. JURISDICTION

Under section 214(e)(6) of the Act, the Commission may, in rural service areas, designate more than one entity as an ETC for a designated service area, so long as the applicant for ETC status meets the requirements of section 214(e)(6). As demonstrated below and as set forth in the affidavit of Steven J. Parrish, Choice's Chief Executive Officer ("CEO"),¹⁰ Choice meets the requirements for ETC designation set forth by the Commission. In addition, Choice complies with

introduce competition have been in vain. Choice has elected to go forward and negotiate interconnection at retail rates in order to compete with Innovative. However, this only underscores the need for ETC status, and USF support, for Choice so that it may compete on a close-to-level playing field.

⁸ See *Ratepayers Voice Dissatisfaction with Service*, THE ST. THOMAS SOURCE, July 9, 2003 (VIPSC hearings held to discuss ILEC service issues including long waiting periods for repairs and service, improper billing practices, frequent phone outages, lack of services, failure to respond to customer complaints and frustration about frequently busy circuits); *Hill Promises Phone Customers a Senate Hearing*, THE ST. THOMAS SOURCE, Mar. 22, 2004 (local legislators express concerns that phone service has been deteriorating and promise a forum for citizens to air their concerns about telecommunications in the U.S. Virgin Islands).

⁹ See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168, 15173, ¶ 13 (2000) (stating that a company could not be expected to compete in a high-cost area against a company that is receiving substantial support).

¹⁰ See Exhibit 2: Affidavit of Steven J. Parrish (Jan. 11, 2005) (hereinafter "Parrish Affidavit").

the Commission's standards for determining whether ETC applications for areas served by rural local exchange carriers would promote the public interest.¹¹

The Commission has the authority to address Choice's request for ETC designation. A carrier seeking ETC status must request such a designation from the state regulatory commission. On October 29, 2002, Choice petitioned the VIPSC for designation as an ETC. After full briefing and oral argument, the VIPSC adopted its hearing examiner's report on February 18, 2004, finding that (1) Choice, a federally licensed wireless service provider, does not—and is not required to—hold any operating licenses or authority from the VIPSC, and (2) Choice is not subject to any other VIPSC reporting requirements because it is a wireless carrier and the VIPSC does not have jurisdiction over such carriers. Accordingly, the VIPSC concluded that it lacks jurisdiction, within the meaning of section 214(e)(6) of the Act, to consider or act upon Choice's request for designation as an ETC. In accordance with the Commission's requirements, Choice has attached the statement of the VIPSC declaring that it lacks jurisdiction to perform the designation.¹² Accordingly, Choice requests that the Commission designate it as an ETC pursuant to section 214(e)(6) of the Act.¹³

III. CHOICE QUALIFIES AS AN ETC

Choice satisfies the prerequisites to be designated as an ETC. Choice now offers—or will offer upon designation as an ETC—all supported services enumerated in section 54.101(a)

¹¹ See *Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order*, 29 FCC Rcd 1563, 1565, ¶ 4 (2004) (stating that the framework adopted in that order would apply to all ETC designations for rural areas).

¹² See Letter to the Honorable Michael Powell, Chairman, Federal Communications Commission, from Valencio Jackson, Chairman, Virgin Islands Public Service Commission (Feb. 27, 2004) (attached as Exhibit 3).

¹³ 47 U.S.C. § 214(e)(6) (directing the Commission to consider ETC requests where the applicant is not subject to the jurisdiction of a state commission).

of the Commission's rules. Choice will provide the supported services using a combination of its own facilities and the facilities of another carrier, and Choice will advertise the supported services using media of general distribution.¹⁴

In addition, as discussed more fully in Section IV, granting Choice's petition is in the public interest, because, among other reasons, it will enable the consumers in the U.S. Virgin Islands to have a choice of telephone service providers. Competitive entry normally leads to lower retail rates and better customer service for consumers.

The universal service support mechanisms and rules are premised on the principle of "competitive neutrality," which means that "universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."¹⁵ The principle of competitive neutrality includes technological neutrality: a carrier may be designated as an ETC regardless of the technology that it uses to provide the supported services.¹⁶ The Commission has the authority to designate any carrier, including a fixed wireless carrier, as an ETC as long as it satisfies the eligibility criteria.¹⁷

¹⁴ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d). *See also Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8847-48, ¶¶ 130-31 (1997) ("Report and Order") (stating that pursuant to section 214(e)(1) to be designated as an ETC the carrier must commit to: (1) offer the supported services; (2) offer the services using its own facilities or through a combination of its own facilities and the resale of another carrier's services; and (3) advertise the availability of the services and their charges using media of general distribution).

¹⁵ *Report and Order*, 12 FCC Rcd. at 8801, ¶ 47.

¹⁶ *See, e.g., id.* at 8850, ¶ 133.

¹⁷ *See Petition of the State Independent Alliance and the Independent Telecommunications Group for a Declaratory Ruling that the Basic Universal Service Offering Providing by Western Wireless in Kansas is Subject to Regulation as a Local Exchange Service*, 17 FCC Rcd 14802, 14816, ¶ 24 (2002). Furthermore, it is irrelevant whether the carrier provides the services using fixed or mobile technology. *See id.*

To date, state commissions and the Commission have designated numerous wireless carriers as ETCs.¹⁸

Pursuant to the Commission's rules and orders, Choice is not required to provide all the supported services prior to receiving ETC designation.¹⁹ The Commission repeatedly has emphasized that requiring carriers to provide the supported services throughout the service area prior to designation as an ETC has the effect of prohibiting competitive entry.²⁰ In reaching this conclusion, the FCC stated that "[n]o competitor would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support without first knowing whether it is also eligible to receive such support."²¹ The entire U.S. Virgin Islands is a high-cost area. It is not economically feasible for Choice to provide the supported services without qualifying to receive universal service support. Furthermore, since Innovative receives high-cost universal support as a subsidy for each access line that it serves, Choice could not realistically enter the market or compete against Innovative for local customers without obtaining the same type of support.²² Therefore, Choice need not currently provide the supported services today in order to be fully eligible to be designated as an ETC in the U.S. Virgin Islands.

¹⁸ See, e.g., *Federal-State Joint Board on Universal Service, IT&E Overseas, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd 10620 (2002); see also *RCC Minnesota, Inc. et al., Request for Designation as an Eligible Telecommunications Carrier*, Docket No. 2002-344, Order (Maine Public Util. Comm'n May 13, 2003) (designating RCC Minnesota, Inc. as an ETC in those areas covered by its federal wireless license in Maine).

¹⁹ See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168, 15173, ¶ 12 (2000).

²⁰ See *id.*

²¹ *Id.* ¶ 13.

²² See, e.g., Universal Service Administrative Company, 2002 Annual Report, High Cost Support by State, Appendix B at 27 (listing the total high-cost support by state and stating that the total support for the U.S. Virgin Islands during 2002 was \$31,792,000); Universal Service Administrative Company, 2003 Annual Report, High Cost Support by State,

The Commission and state commissions previously have granted ETC designations when the carrier did not provide all supported services at the time of the application. For example, in designating IT&E as an ETC in the Territory of Guam, the FCC stated that “IT&E has demonstrated through the required certifications that it now offers, *or will offer*, the services supported by the federal universal service mechanisms upon its designation as an ETC.”²³ As another example, the Commission granted Cellular South’s ETC petition even though the carrier did not provide voice grade service or emergency services in certain rural territories.²⁴ Similarly, in granting RCC Minnesota’s request for ETC status, the Maine Public Utilities Commission stated that “RCC does (or will) advertise [the services] availability” and that the “FCC’s rules do not require a carrier to have the capability to serve all customers at the time of designation, only that the carrier be willing to serve all customers.”²⁵

The Commission has stated that an applicant for designation as an ETC can demonstrate “its capability and commitment to provide universal service without the actual provision of the proposed service” through one of four mechanisms, among others:

- (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier

Appendix B at 27 (listing the 2003 high-cost support for the U.S. Virgin Islands as \$30,176,000).

²³ *Federal-State Joint Board on Universal Service, IT&E Overseas, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, 17 FCC Rcd at 10624, ¶ 10 (2002) (emphasis supplied).

²⁴ *See Federal State Joint Board on Universal Service, Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24393, 24399-400, ¶¶ 16-18 (2002) (stating that the FCC’s rules recognize the existence of dead spots, which are defined as “small areas within a service area where the field strength is lower than the minimum level for reliable service,” and that the presence of dead spots does not hinder Cellular South’s ETC designation request) (citations omitted).

²⁵ *RCC Minnesota, Inc., et al., Request for Designation as Eligible Telecommunications Carrier*, Order, Docket No. 2002-344 (Maine Public Util. Comm’n, May 13, 2003).

has entered into interconnection and resale arrangements; *or* (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.²⁶

As set forth below, Choice demonstrates its commitment to provide the supported services through several of these mechanisms, namely, by furnishing an affidavit demonstrating its plans to offer and advertise the services, by describing deployed and proposed technology that it will use to provide the services, and by explaining the extent to which it already provides certain of the supported services.

A. Choice Offers the Supported Services

Choice offers—or will offer after designation as an ETC—all of the services and functionalities set out in the Commission’s rules.²⁷ The FCC has designated the following services for USF support:

- single-party service;
- voice grade access to the public switched network;
- local usage;
- Dual Tone Multifrequency (“DTMF”) signaling or its functional equivalent;
- access to emergency services;
- access to operator services;
- access to interexchange service;
- access to directory assistance; and
- toll limitation for qualifying low-income consumers.²⁸

²⁶ *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd at 15178, ¶ 24 (emphasis added).

²⁷ 47 C.F.R. § 54.101(a); *see* Parrish Affidavit ¶¶ 3-4.

²⁸ *See Report and Order*, 12 FCC Rcd at 8807-25, ¶¶ 56-87 (describing each of the supported services in detail); 47 C.F.R. § 54.101(a); *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947, 22948 n.5 (1997).

1. *Single-party service or its functional equivalent.*

In the case of wireless service operators, which use spectrum shared among users to provide service, single-party service means a dedicated message path for the duration of a user's particular transaction.²⁹ Choice has provided single-party service and voice grade access to the public switched network by both broad-based SMR service and targeted radio services, e.g., a T1 radio link to Little St. James Island, which otherwise would be unserved. After designation as an ETC, Choice will offer these services using fixed wireless equipment throughout the U.S. Virgin Islands and by reselling local wireline facilities.³⁰ Since Choice will provide single-party service predominantly through the use of wireless technology, Choice will satisfy the single-party requirement by providing a dedicated message path for the length of a user's particular transaction.

2. *Voice grade access to the public switched telephone network ("PSTN").*

Voice grade access to the PSTN means that subscribers can make and receive phone calls within the frequency range between 500 Hertz and 4,000 Hertz.³¹ Choice provides access to the PSTN on its SMR system, including signaling that the caller wishes to place a call and that there is an incoming call, and will employ that knowledge and experience to provide the same service throughout its ETC service area.

3. *Dual Tone Multi-Frequency ("DTMF") signaling or its functional equivalent.*

Service providers can offer rapid call set up, call detail information, enhanced services and support modem usage through DTMF signaling. ATN, Choice's parent company, has a Sonus GSX 9000 soft switch deployed and operating in the United States. Choice is evaluating

²⁹ *Report and Order*, 12 FCC Rcd at 8810, ¶ 62.

³⁰ Choice is deploying NextNet wireless broadband equipment in its licensed frequencies with which it can offer voice over broadband connections.

³¹ *Report and Order*, 12 FCC Rcd at 8811, ¶ 64.

whether to install a smaller Sonus GSX 4000 or another manufacturer's switch in St. Thomas to provide DTMF functionality. This switch also will enable many of the other services designated for USF support such as access to emergency services, access to operator services, and local interconnection. Choice's management and its sister companies have substantial experience deploying such equipment and providing local services.³² Choice currently can provide DTMF-equivalent signaling to its wireless broadband subscribers through voice-over-Internet-protocol ("VOIP") technology. Choice will enhance and expand that capability through the use of new wireless and broadband equipment that it will introduce in the first half of 2005.

4. *Access to Emergency Services.*

The Commission has recognized the critical nature of robust emergency communications in many proceedings.³³ Choice currently provides its local customers with access to standard "911" service through the PSTN, which permits the customer to access emergency services from its Choice SMR handset. Choice will extend this service to its new customers in its ETC service area. E911 is not currently available in the U.S. Virgin Islands. If the U.S. Virgin

³² Choice's senior management team each has decades of experience with such local telephony providers as Illinois Bell, Ameritech, BellSouth, Fluor Daniel Telecom and Innovative. Choice's parent company, Atlantic Tele-Network, Inc. ("ATN"), owns a substantial stake in the incumbent telephone provider in Guyana (Guyana Telephone & Telegraph ("GT&T")) and the largest cellular operator in Bermuda (Cellular One). ATN purchased an interest in GT&T when it had an outdated analog network comprising 13,000 lines and poor international connectivity. Today GT&T has a 100% digital wireline and wireless network with combined lines in service and cellular subscribers of about 250,000 and excellent international connectivity. In Bermuda, ATN financed a challenger to the incumbent cellular provider that gained over 50% of the market in less than four years.

³³ See *Report and Order*, 12 FCC Rcd at 8815, ¶ 72; *Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 14 FCC Rcd 21,177, 21179, ¶ 2 (1999). Emergency services are particularly important to residents of the U.S. Virgin Islands due to the almost constant threat from natural disasters such as hurricanes and earthquakes. In the U.S. Virgin Islands "access to emergency services" also must include the ability of a service provider to survive or quickly recover from a natural disaster. The presence of a wireless CLEC in the market will increase the chance that emergency service survives or quickly recovers, e.g., through the use of temporary mobile transmitters, to the benefit of the public and public safety entities.

Islands implements E911, then Choice will work with the Public Service Access Points (“PSAPs”) to make E911 service available to Choice customers in accordance with the U.S. Virgin Islands’ implementation plan.

5. *Access to operator services, directory assistance and interexchange services.*

Choice will provide its customers with access to operator services and directory assistance consistent with its obligations as an ETC. Choice has customer service representatives on staff that are cross-trained to assist Choice customers regardless of the service to which they subscribe and ISP Help Desk Technicians. Both of these business units can be cross-trained to provide both operator assistance and directory assistance or these services can be outsourced to a variety of providers.

6. *Access to interexchange services and local usage.*

Choice is working to finalize an interconnection agreement with Innovative that gives Choice the capabilities needed to offer local usage through co-carrier traffic exchange and resale of the ILEC’s facilities. Although the Commission has not established a minimum local usage requirement, Choice will comply with any local usage requirements adopted by the Commission, and Choice will include local usage as part of its universal service offering.

Choice has created relationships that will enable Choice customers to select Choice as their long distance carrier in 2005. The interconnection agreement provides for transit service as well as local terminating service, so Choice can use the ILEC to access interexchange carriers (“IXCs”) and interexchange services. Choice will be able to offer a full range of local and long distance telephony services to consumers through a combination of its own facilities, direct relationships with IXCs and resale of the ILEC’s facilities.

7. *Toll limitation for qualified low-income customers.*

Upon designation as an ETC, Choice will make available to qualifying low-income consumers a toll limitation service to help control telephone costs. Since Choice does not currently have ETC status, it has not yet established toll limitation capability or other CLASS 5 switch functionalities in its Sonus switch.

B. Choice Satisfies the Facilities Requirement

Choice will provide the supported services through a combination of its existing fixed wireless facilities, its next generation wireless broadband network (currently in the early stages of deployment), and through the resale of ILEC facilities. As stated above, Choice already operates as a facilities-based fixed wireless provider under its own licenses, and Choice is negotiating with other carriers to purchase or lease additional facilities to house new equipment, expand service offerings and improve service reliability.

Choice's current wireless network provides it with the capability to offer fixed wireless local loop, high-speed Internet access, and digital television service to large parts of St. Thomas, St. John, and St. Croix. Choice's physical plant already houses routing equipment to support its ISP business, and Choice currently leases 10 towers and has built five of its own to transmit its wireless services. Choice's parent company, ATN, owns and operates a Sonus switch in the United States that can provide switching of voice and data traffic and can support operator and directory services, among other USF supported services. Enhancing the capabilities of this switch is quickly and easily accomplished and is only one of several means available that will enable Choice to provide USF-supported services in a short timeframe. Furthermore, Choice already has the licenses it needs to provide service throughout the coverage area of the incumbent carrier, Innovative. Through the addition of two-way antennas, additional routing equipment, and switched access, customers can receive all of the supported services.

To accelerate deployment of USF-supported services while Choice continues its build out of facilities-based services, Choice will resell both local access and ancillary services as discussed above.³⁴

C. Choice Will Advertise the Supported Services

Choice will advertise the availability of the supported services through media of general distribution in the U.S. Virgin Islands, for example, using the radio and printed media. Choice currently uses its in-house marketing department to advertise many of its services, including, for example, digital wireless television, high-speed Internet access, dispatch and paging services through local media, print, radio and television.³⁵ Choice will use these same channels to communicate the availability of new service offerings.

Choice market analysis indicates that there is substantial pent up demand for service that competes with the ILEC. In addition, the amount of high cost support that Choice receives is based on the number of supported lines that it serves. As a result, Choice has ample incentive to advertise the supported services through means of general distribution.

D. Choice's Service Area Will Equal or Exceed the ILEC Study Area

Choice will offer each of the required services throughout its licensed service area (BTA 491, which is composed of St. Thomas, St. Croix, St. John, Water Islands, and all of the other islands within the BTA), which covers Innovative's study area. As noted above, Choice's current service extends to some areas not served by Innovative, such as Little St. James Island. Choice also provided WDSL service to Lovango Cay, a small island located a few miles off St. Thomas. Once Choice wireless service is deployed it is a relatively straightforward process to serve areas where cabling would be economically infeasible or impossible due to terrain. Once it

³⁴ See *Report and Order*, 12 FCC Rcd at 8791, ¶ 24.

³⁵ Samples of Choice print advertisements are attached as Exhibit 4.

has ETC status and USF support, Choice will extend service to similarly underserved areas of the territory. Choice requests designation as an ETC throughout the entire U.S. Virgin Islands territory.

IV. IT IS IN THE PUBLIC INTEREST TO DESIGNATE CHOICE AS AN ETC

In *Virginia Cellular*,³⁶ the Commission established a new framework for the consideration of ETC designation requests in rural areas. In particular, the Commission stated that in determining whether the designation of a particular ETC was in the public interest, it will “weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service, and the competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.”³⁷ As demonstrated herein, when applying this framework, it is clear that it is in the public interest to designate Choice as an ETC. Consumers in the U.S. Virgin Islands currently obtain sub-par telephone service from Innovative, and it appears that Innovative does not have the capacity to serve all customers seeking telephone service.³⁸ First, by designating Choice as an ETC, the Commission will enable customers to obtain quality telephone service. Indeed, designating Choice as an ETC will facilitate competitive expansion of universal service to the benefit of consumers in

³⁶ *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2004) (“*Virginia Cellular*”).

³⁷ *Id.* at 1575-76, ¶ 29; see also *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 6422 (applying the criteria set forth in *Virginia Cellular*).

³⁸ See, e.g., *What is the Burden of Proof That the PSC Demands?* THE ST. THOMAS SOURCE OPEN FORUM, May 13, 2004 (reader expresses dismay that the lack of telecommunications competition in the U.S.V.I. has resulted in reduced quality of service, increasing costs and prices, decreasing reliability and an absence of new services).

the U.S. Virgin Islands.³⁹ Second, designating Choice as an ETC and the availability of USF support will advance universal service by bringing consumers in the U.S. Virgin Islands competitively priced telecommunications and better customer service, which are sorely needed.⁴⁰ Third, designating Choice as an ETC in the U.S. Virgin Islands will promote rapid development of new technologies in those areas, and will provide a greater number of consumers with access to innovative new technologies.

The telecommunications market in the U.S. Virgin Islands is dominated by the ILEC, Innovative, which has a *de facto* monopoly on wireline telephony service in the territory and dominates telecommunications in general.⁴¹ Designating Choice as an ETC not only will bring competition to consumers in the U.S. Virgin Islands, but also will provide consumers with a broader array of telecommunications products and services.⁴² In addition, since Choice is authorized to serve the entire U. S. Virgin Island territory, designating Choice an ETC does not raise any cream-skimming concerns; Choice will not serve solely high-margin customers. Its existing network has been optimized to provide wireless services to residences, multiple dwelling units (“MDUs”) and businesses throughout the territory. Moreover, Choice will outperform the

³⁹ See *Universal Service First Report and Order*, 12 FCC Rcd. at 8781, ¶ 4 (quoting *Joint Explanatory Statement* recital that goal of 1996 Act is to establish “a pro-competitive . . . framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to *all* Americans by opening *all* telecommunications markets to competition”) (*emphasis added*).

⁴⁰ The VIPSC has expressed concern about Innovative failing to adhere to agreed service standards, including responding to customer requests for new service or repair of existing service. See generally, Transcript of VI Senate Hearing regarding Status of Telecommunications in the Virgin Islands, May 27, 2004; see also *supra* note 38.

⁴¹ See *supra* note 3.

⁴² The Commission has concluded “designation of competitive ETCs promotes competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.” *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 48, 55 (2000). This is particularly true in the U.S. Virgin Islands where the ILEC is not subject to the discipline or incentives of meaningful competition.

ILEC in all important provisioning and service metrics so that the U.S. Virgin Islands will benefit from the service improvements enjoyed in competitive markets across the country.

A. Designating Choice as an ETC Will Be Beneficial to Consumers in the U.S. Virgin Islands

As a wireless carrier, Choice brings many significant advantages to consumers in the U.S. Virgin Islands. One of the principal goals of the Telecommunications Act of 1996 was to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”⁴³ Congress recognized that competition drives down prices and promotes the development of advanced communications as carriers vie for a consumer’s business. The Commission has recognized the importance of these benefits to rural areas, finding that “imposing additional burdens on wireless entrants would be particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower cost than traditional wireline service.”⁴⁴

Designating Choice as an ETC will result in lower end user rates, better customer service, and a broader array of service offerings to consumers.⁴⁵ Choice already has deployed and is in the process of deploying products and services to end user customers that Innovative does not offer including wireless broadband Internet service. Moreover, Choice’s wireless service lends itself to rapid deployment and expansion across the islands and to remote locations without the need for stringing aerial cable or trenching. For example, when confronted with the costs of laying

⁴³ Telecommunications Act of 1996, Public Law 104-104, 100 Stat. 56 (1996).

⁴⁴ See *Universal Service First Report and Order*, 12 FCC Rcd at 8881-82.

⁴⁵ In *Guamcell*, the Commission found that designating Guamcell as an ETC in the areas served by the rural telephone company in Guam would promote “competition and the provision of new technologies to consumers in high-cost and rural areas of Guam.” See *Guamcell Order* 17 FCC Rcd 1502, ¶ 15.

submarine cable and the ILEC's unwillingness to tariff necessary DS3 services, Choice installed wireless T1s and DS3s between St. Thomas and St. Croix. Choice has planned similar deployments on a smaller scale to reach residences throughout the islands.

If designated as an ETC, and receiving USF support, Choice will be able to offer services and rate plans that are competitive with Innovative's USF supported service offerings and affordable to consumers. Choice commits that it will offer the supported services throughout its local calling area, which is comparable to Innovative's licensed area and, as stated above, includes areas that Innovative does not service.⁴⁶ Absent competition, there is no incentive for the ILEC to improve the products and services—or reduce its rates—that it provides to its end user customers. Without ETC status and USF support, competition in the U.S. Virgin Islands on the same scale as the ILEC is not economically feasible.

Choice is the only other locally based telecommunications provider in the U.S. Virgin Islands that currently is positioned to provide a competitive local telecommunications alternative to Innovative. Although cellular providers are present in the market, local geography makes it difficult, if not impossible, for those mobile providers to cover all dead zones such that it can provide service equivalent to Innovative in geographic scope. With a choice of service providers, the consumer is able to select a provider based on service quality, service availability and rates. The benefits of increased competitive choices afforded consumers by the offerings of fixed and mobile wireless ETCs are well known to the Commission and previously have been a significant factor in the evaluation for ETC designation.⁴⁷ These benefits include, at a minimum,

⁴⁶ See Exhibit 1: Map of Choice's licensed service area; *see also supra* note 3.

⁴⁷ See *Virginia Cellular LLC Petition for Designation as an Eligible Communications Carrier*, 29 FCC Rcd at 1575-1576, ¶ 28; *Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, 17 FCC Rcd 24402, ¶ 23.

the ability provide an alternative technology platform. As a result, consumers will have a choice of service provider and service offerings.

Furthermore, designating Choice as an ETC will benefit consumers by providing them with access to emergency services. As stated above,⁴⁸ emergency services are critical to residents in the U.S. Virgin Islands due to the almost constant threat of natural disasters such as hurricanes and earthquakes. The presence of a wireless CLEC in the market, such as Choice, will increase the chance that emergency service survives or quickly recovers, such that consumers have access to those services.

B. Choice ETC status will have at most a minimal impact on the Universal Service Fund

The financial impact of granting Choice's ETC application for the rural service area proposed herein on the universal service fund at most is minimal. Presently the total USF support for the U.S. Virgin Islands is a small fraction of the total fund allocated to carriers. Given the small size of the addressable market it is unlikely that an increase in total USF support to the territory would be dramatic even if 100% penetration were reached. Further, even if there were a substantial increase in USF support to the U.S. Virgin Islands, Choice would use the funds to meet the goals of universal service, such as deploying service throughout the territory.

C. Choice ETC service offers unique advantages

As described above, Choice has predicated the expansion of its services on its ability to offer consumers the following: competitive choice as to existing services; a selection of new services that are largely unavailable in this market (*e.g.*, wireless broadband); and new technology that will support flexible deployment of basic and enhanced services (*e.g.*, fixed wireless services can move with a customer. When a customer moves from one home on the island to another, there

⁴⁸ See *supra* note 33.

will be minimal, if any, need for a disconnect/reconnect service call. It will be a simple matter for the customer to take the Choice equipment with them to the new location and reestablish service. Perhaps most importantly, Choice is able to deploy—and has deployed—wireless services to customers in areas where landline service is not feasible, or where the ILEC has chosen not to provide service. Thus, designating Choice as an ETC fulfills the fundamental objective of universal service: to make telecommunications services available to all consumers, regardless of their location.

D. Choice Will Commit to Providing High Quality Services

Choice will make voluntary commitments to provide high quality service. Choice has every incentive to offer exceptional quality of service -- there is substantial demand for service from an entity that can improve on the service provided by the ILEC. For example, it is Choice's understanding that customers currently wait up to six weeks for the ILEC to establish their initial service, and that they then must wait two to three weeks for repair work.⁴⁹ In addition, the ILEC network experiences frequent outages, and there are indications that the ILEC system is operating beyond capacity, *e.g.*, daily "all circuits are busy" messages. Without any competition, Innovative does not have any incentive to improve the quality of its own network, and customers are left without phone service. Choice commits to improve response time for service installation and repair and address customer demand for readily available and reliable service. While these commitments may seem ordinary, they are truly unique in the U.S. Virgin Islands. Choice also will commit to offer service throughout its service area, to enhance and improve facilities, to provide quality

⁴⁹ See *supra* notes 8 and 38; see also *Service Has Deteriorated Since [Innovative] Takeovers*, THE ST. THOMAS SOURCE, Nov. 11, 2004; *Reader Urges RTFC to Take Over Innovative*, THE ST. THOMAS SOURCE, Sept. 20, 2004; *Innovative's Features Not So Special, Need to Fix*, THE ST. THOMAS SOURCE, Dec. 26, 2002; Government of the Virgin Islands of the United States, Public Services Commission, Transcript of Regular Meeting, Aug. 25, 2004 (discussing the need for new telecommunications services, substandard DSL service and consumer concern with quality, reliability and affordability in the absence of competition).

service, to comply with CTIA Consumer Code, and to serve the designated ETC area within a reasonable timeframe.

1. *Commitment to Serve All Customer's within Service Area*

In response to requests for service at a residence or business located within the ETC Service Area, Choice will take the following steps:

- Requests from customers for service within Choice's ETC Service Area -- where Choice currently provides service, then Choice will provide service using its standard customer equipment and service offerings where available.
- If a request comes from a customer residing in any area within the ETC Service Area where Choice does not provide service at the time of the request, then Choice will evaluate the feasibility of a number of means to provide service, including the following:⁵⁰
 - Whether a roof-mounted antenna or other network equipment can be deployed at the customer's premises to provide service;
 - Whether adjustments at the nearest Choice transmission facility can be made to provide service;
 - Whether there are other available adjustments to network or customer equipment to provide service;
 - Whether an additional tower site, amplifier, or repeater can be employed or could be constructed to provide service, and evaluate the costs and benefits of using high-cost USF support to serve the number of customers requesting service; and
 - Whether resold service should be offered to the customer's location in order to provide immediate service.

If, after evaluating the various options described above, Choice determines that it must deny a service request, then Choice will notify the customer and provide the Commission with an annual report of how many requests for service were refused following the foregoing evaluation. These service provisioning commitments will ensure that Choice will be responsive to consumers' needs in the ETC Service Area, while acting as a proper steward of available high-cost support funds.

⁵⁰

Choice presently engages in all of these steps, with the exception of USF support and resale analysis, when it receives a request for video or broadband data service, and Choice has utilized all of the identified solutions to provide service to customers.

2. *Commitment to Enhance and Improve Facilities*

Choice has identified several projects in the ETC Service Area that would be directly funded with high cost support. As one example, Choice will use the support to expand its network and improve its facilities. In addition to potentially adding a CLASS 5 applications server and local gateway function to ATN's Sonus switch, Choice will upgrade its microwave backbone network and its transmission site facilities. Choice also will expand its data capabilities and facilities. Choice will continue to incur maintenance and the expenses associated with the upgrading of existing plant in the ETC Service Area that are equally appropriate uses of high cost funds.

3. *Commitment to Service Quality*

Choice fully supports the Commission's efforts to collect service quality data that will permit it to develop meaningful service quality rules, to the extent necessary. For example, if the Commission grants ETC status, then Choice will provide the Commission with an annual report providing the number of consumer complaints per 1,000 customers served.

4. *Commitment to Comply with CTIA Consumer Code*

Choice has committed to abide by the CTIA Consumer Code (the "Code") for wireless services, which requires signatories to adopt specific principles, disclosures, and practices for services provided to individual consumers in order that consumers have information that permits them to make informed choices about telecommunications services, and ensures that customers understand their service and rate plans.⁵¹

⁵¹ Among the Code requirements are: disclosure of rates and terms of service; availability of service availability maps; confirmation of service terms and conditions with customer; service trial period; disclosure of terms and condition in advertising; separately identify carrier charges from taxes on billing statements; permit termination of contracts for material changes in terms; provide ready access to customer service; promptly respond to consumer inquiries and complaints; and protect customer's privacy. Choice already adheres to the

5. *Choice will be able to serve the designated ETC area within a reasonable time frame.*

Choice already has invested over \$18 million in property, plant and equipment to currently provide wireless service and is in the process of deploying next generation equipment in order to offer additional services to the citizens of the U.S. Virgin Islands. Current and planned infrastructure will support the rollout of the services discussed in this application. Arrangements with third parties necessary to offering some of the specialized services described herein are presently being negotiated. As a result, Choice will be able to provide service to all locations served by the ILEC within a reasonable time after grant of this application for ETC status.

E. Cream-Skimming Is Not A Concern

Designating Choice as an ETC does not raise any cream-skimming concerns. As stated above, Choice's licensed service area is comparable, if not identical, to Innovative's. Choice has committed to take various steps to provide service to any requesting customer within its licensed service area. Moreover, because Choice will rely primarily on its existing and expanding wireless network to offer service, it is likely that Choice can economically serve high-cost areas that are not economic to serve using aerial or trenched plant. As a result, Choice is not limiting its coverage solely to lower cost areas of the U.S. Virgin Islands.

Choice will comply with all Commission rules governing universal service programs that are intended to ensure that the public interest standards of the Act are achieved. Granting ETC status and permitting Choice to access the USF will support Choice's efforts to enhance and expand its network to better serve consumers in the Virgin Islands.

majority of these requirements in its existing lines of business. *See Exhibit 5: CTIA: Consumer Code for Wireless Services.*

V. ANTI-DRUG ABUSE CERTIFICATION

Choice certifies that no party to this Petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, U.S.C. § 862.⁵²

VI. HIGH-COST, INTERSTATE ACCESS, AND INTERSTATE COMMON LINE SUPPORT CERTIFICATION

Section 54.314 of the Commission's Rules require a carrier seeking USF support to be certified by the appropriate state commission or where, as here, the state commission does not exercise jurisdiction, self-certify with the Commission and the Universal Service Administrative Company ("USAC") as to its compliance with section 254(e) of the Act.⁵³ As discussed above, the VIPSC does not exercise jurisdiction over Choice. Choice has submitted its high-cost interstate access and interstate common line support certification letter with the Commission and with USAC.⁵⁴

⁵² 21 U.S.C. § 862. *See* Exhibit 6: Choice Anti-Drug Abuse Certification.

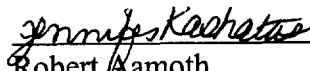
⁵³ 47 C.F.R. § 54.314.

⁵⁴ *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission & Irene M. Flannery, Vice President – High Cost and Low Income Division, from Steven J. Parrish, Chief Executive Officer, Choice Communications LLC (Jan. 11, 2005) (attached as Exhibit 7).

VII. CONCLUSION

For the foregoing reasons, Choice respectfully requests that the Commission designate it as an ETC in its licensed service area.

Respectfully submitted,


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